Cedar Rapids Steel Transport, Inc. a/k/a CRST, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 238. Case 18–CA–7653

27 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 23 March 1983 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Union filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cedar Rapids Steel Transport, Inc., a/k/a CRST, Inc., Cedar Rapids, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The judge found that Robert Konchar was director of labor relations for the Respondent when in fact Konchar is one of the attorneys who represented the Respondent in the course of its negotiations with the Union. Also, at one point in his decision, the judge suggests that the Union made its information request on 17 March 1982, the same date that it presented its initial contract proposal to the Respondent. However, it is clear from the record, and as reflected elsewhere in the judge's decision, that the Union's request for information and the Respondent's initial response thereto were made on 27 March 1982.

[2] In affirming the judge's decision, Member Dennis finds that the Union demonstrated the reasonable or probable relevance of the information requested to the Union's role as bargaining representative of the city drivers.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Upon a charge of unfair labor practices filed on April 5, 1982, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 238, herein called the Union or the Charging Party, against Cedar Rapids Steel Transport, Inc., a/k/a CRST, Inc., herein called the Respondent or CRST, a complaint was issued by the Regional Director for Region 18 on behalf of the General Counsel on May 28, 1982.

The complaint alleges in substance that the Union is and has been at all times material herein the exclusive collective-bargaining representative of the Respondent's employees, and that the Union requested the Respondent to furnish it certain information to enable it to perform its representative function, which the Respondent has failed and refused to furnish, in violation of Section 8(a)(1) and (5) of the Act.

The Respondent filed an answer on June 11, 1982, denying that it has engaged in any unfair labor practices as alleged in the complaint.

The hearing in the above matter was held before me in Cedar Rapids, Iowa, on January 12, 1983. Briefs have been received from counsel for the General Counsel, counsel for the Charging Party, and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all times material herein, an Iowa corporation with headquarters and a place of business in Cedar Rapids, Iowa, where it is and has been engaged as a common carrier in the interstate transportation of freight.

During the 12-month period ending December 1, 1981, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $50,000 for the transportation of freight and commodities from the State of Iowa, directly to points outside the State of Iowa. During the same period, the Respondent performed services valued in excess of $50,000 in States other than the State of Iowa.

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 238, herein called the Union or the Charging Party, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The Respondent is an Iowa corporation with headquarters and a place of business in Cedar Rapids, Iowa, where it is a common carrier engaged in the interstate transportation of freight.

The parties stipulated that the following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time city employees engaged in local pick-up and delivery and assembly of freight in an area not to exceed a radius of 25 miles of Cedar Rapids, Iowa, or in the case of peddle drivers, not to exceed a radius of 100 miles of Cedar Rapids, Iowa, employed by Cedar Rapids Steel Transport, Inc., at its Cedar Rapids, Iowa facility; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The parties also stipulated that the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the above-described unit, and that such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1979, and including March 31, 1982. (G.C. Exh. 2.)

The parties further stipulated that the Union herein is the exclusive representative of the employees in the unit above described for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The parties stipulated that since on or about March 27, 1982, the Union, by letter hand delivered to the Respondent during a negotiating session, requested the Respondent to furnish the Union with the following information:

> Re: Information needed to negotiate succeeding CRST, Inc.-Local 238 Agreement covering the Cedar Rapids city unit and garage unit.
>
> In compliance with the NLRB policy of good faith bargaining and in order to make it possible for Local 238 to properly bargain with the Company; and further in light of the NLRB decision in case of Lincoln Sales & Service, Inc., d/b/a Midlands Express, Employer, and General Drivers Helpers Union 554 Case No. 17-RC-8363 (236 NLRB 619), the following information is requested:
>
> 1. During the calendar year 1981 state the number of drivers employed by Lincoln Sales & Service, Inc., d/b/a Midlands Express or by Midlands Express who either picked up or delivered dispatches of freight in Cedar Rapids, Iowa or the area coming under the jurisdiction of the collective bargaining agreements between CRST, Inc. and Local Union No. 238.
>
> 2. Where the said dispatched freight deliveries or pickups were pertinent, were they handled under the CRST, Inc. city contract?
>
> 3. What pickups or deliveries, if any, were made out of Manchester, Iowa, or other points which would fall within the jurisdiction of Local Union No. 238 and its contract with CRST, Inc.?
>
> 4. How many dispatches were handled by Lincoln Sales & Service, Inc. d/b/a Midlands Express or Midlands Express or Lincoln Sales & Service, Inc. through leasing arrangements with owner operators or fleet contractors to handle the same from the area covered by Teamsters Local Union No. 238? Name the owner operators, fleet contractors, including Midlands Express, Lincoln Sales & Service, Inc. and others which have handled freight of any nature during the calendar year 1981, under the certificate issued by the Interstate Commerce Commission (Department of Transportation) to C.R.S.T, Inc.
>
> 5. Name any other companies engaged in handling of freight under permits issued by the Interstate Commerce Commission (Department of Transportation) during the year 1981 and which are either wholly owned or majority interest of the same owned by Herald Smith, Miriam Smith, Paul Shawver and Rebecca Shawver, John Michael Smith, and/or a combination of any of the said persons.
>
> 6. Set out which of said companies identified from the previous paragraphs have operated in or out of the territory covered by the contracts with CRST, Inc. and Teamsters Local 238 during calendar year 1981.
>
> 7. Set out more fully what persons, if any, have handled and made delivery of freight under the provisions of the city cartage Agreement between CRST, Inc. and Local 238, if the same had been delivered by employees of CRST, Inc. instead of by employees, owner-operators or fleet contractors as set out above.

I take administrative notice of the Board's decision in *Midlands Express*, 236 NLRB 619 (1978), that CRST, Inc. and Lincoln Sales & Service, Inc., d/b/a Midlands Express are joint employers of employees in the following unit:

> All full-time and regular part-time drivers employed by Lincoln Sales & Service, Inc. d/b/a/ Midlands Express, at its Omaha, Nebraska facility, EXCLUDING office clerical employees, professional employees, guards and supervisory employees as defined in the Act and all other employees.

The parties commenced negotiations for a new contract in January 1982 in an effort to obtain an agreement to succeed its agreement which was to expire March 31, 1982. The parties met in negotiation sessions on approximately 15 to 20 occasions. Early in its negotiation sessions, the Union requested the Respondent to furnish the specific information enumerated in its letter dated and delivered March 27, 1982 (G.C. Exh. 7), regarding the scope and volume of the Respondent's city and over-the-road truckdrivers' work, in an effort to determine whether there was enough work for the city drivers, whom the Union also represented. The Respondent furnished only some of the information requested to the National Labor Relations Board in November 1982, at which time a copy of said information was furnished the Union. The Respondent has not as of this date furnished the information requested directly to the Union. The Union therefore contends that the Respondent has failed and refused to furnish the information requested in violation of Section 8(a)(1) and (5) of the Act.

Consequently, the issues presented for determination in this proceeding are:

1. Is the information requested by the Union necessary and relevant to its representative function of Respondent's unit employees?

2. Did Respondent fail and refuse to honor the Union's several requests for the specified information?

B. *Bargaining Sessions of the Parties and the Union's Request for Information*

According to the undisputed and credited testimony of Harry J. Wilford, secretary/treasurer and business representative for Local 238, the Union and the Respondent met in the first bargaining session on January 13, 1982, for the purpose of negotiating a new contract to succeed their current agreement which would expire on March 31, 1982. Persons present during the session were John Grigsby, Esq., of Richmond, Virginia, and Larry Pollard, for the Respondent. The parties engaged in some 15 to 20 bargaining sessions between January 13, 1982, and November 1982. Other persons attending sessions for the Union were Herman Casten, business agent for the Local, and at a later time Stewart Christensen. Representing the Respondent initially were attorney Grigsby, who was succeeded by attorney Melvin R. Manning, and Robert Konchar, industrial relations director. Wilford took notes during all of the bargaining sessions including the session on March 19, at which time attorney Grigsby presented a proposal to the Union (G.C. Exh. 3). On page 2 of that proposal at the top of the page, Wilford testified that Grigsby said he would completely eliminate the bargaining unit covered in the prior agreement. He explained his understanding of the Respondent's proposal as follows:

> A. The way this would do that is that the previous contract provided for the company to maintain a minimum of four city jobs, under this city—pick-up drivers, dock and wide peddle area driver contract and the Company's proposal there is to name individuals in there with the net result that when those people either retired, left the company for any reason, there would be no more city bargaining unit.
>
> Q. Did the company propose anything else with regard to the members of the bargaining unit, covered by the soon to expire collective bargaining agreement?
>
> A. No, their proposal has not changed, in that respect.

Wilford further testified that the Company's proposed language modification in the second paragraph of article 1, that eliminating the prior language was basically eliminating the work that was provided for the city employees. The only reason offered for the change by the Company was Pollard's statement to the effect that the Company did not need any city drivers. The position of the Union was that sufficient work was being performed by the over-the-road drivers that belonged to the city drivers, and that if that work were performed by the city drivers there could be possibly at least four or more city employees working under the contract. The Union's conclusion on this matter is supported by the fact that the over-the-road drivers from time to time had informed the Union about how much work was being performed in the Cedar Rapids area by road drivers, and that the Respondent and the other companies that were in the Omaha Local 554 case versus CRST and Lincoln Sales & Service and Midland Express were all one and the same thing; and that the old drivers supplied by all of those companies performing this work would eliminate the city drivers.

The Union based its request on the information on pages 1 and 2 of the General Counsel's Exhibit 4, the Respondent's notices to drivers other than Local 238, advising of new cargo claim classifications dealing with preventable and nonpreventable claims, as well as the letter, the General Counsel's Exhibit 5, a letter from Local 592 to the Eastern Conference of Teamsters, advising about its observation of CRST representing itself as CRST and Lincoln Sales & Service, involving considerable other nonunion truckdrivers.

The General Counsel's Exhibits 6(a), (b), and (c), a brochure put out by CRST, suggest the Respondent's relationship with the other companies named therein, which the Union believes are operating trucking operations within its jurisdictional territory. It was also this information on which the Union concluded the need to request the information from the Respondent on March 27, 1982. The information indicated the companies (CRST, Lincoln Sales & Service, with its subdivision) were all one and the same, that they were operating all over the territory of CRST, and that they came in and out of the CRST territory on a daily, weekly, or monthly basis.

Wilford testified that when the Union presented its written request for the information to Konchar on March 27, 1982, he told Konchar that the Union felt it needed the information to do a better job representing its members in negotiations for a new city contract. Konchar said he would have to talk to the Company about it. Later, Konchar advised him that he did not think the information was pertinent, and that the Company thought the Union wanted the information to organize employees in some of the other companies. He said he told Konchar that that was not true. Subsequently, the Union made an informal and oral request for the information outlined in its letter of March 27 at nearly every negotiating session, by advising the Respondent that the Union was still awaiting the information. On April 16, 1982, Wilford said he gave the Respondent another letter (G.C. Exh. 8), the substance of which was the same as the March 27 letter, requesting the same information. By this time, the charge in the instant proceeding had been filed and Konchar told him that since this was a matter before the Board there would be no response to the Union's request from the Company.

The Union presented its first proposal to the Company on March 17 when Konchar informed Casten and Wilford that the Company rejected the Union's request be-

cause it was irrelevant to matters in negotiations. The Union thereafter mentioned its requests for the information during the bargaining session held on May 20, when Manning became counsel and negotiator for the Respondent. During the May 20 bargaining session, Wilford testified that he recalled Manning asking him just what specific information the Union was requesting, and he replied that the information the Union requested was that in its letters of March 27 and April 16. He denied he told the Company the Union was not going to answer any more questions about the requested information and that the Company would have to rely solely on the contents of the letters. Instead, he recalled being asked a number of legal questions to which he replied that if they were asking legal questions they would have to contact Robert E. Conley, attorney for the Local. Herman Casten, business representative of Local 238, corroborated essentially all of Wilford's testimony about the Union's requests and the Company's nonresponse.

Wilford denied the Company asked him more questions about the request and he told the Company to take it up with the Board. Instead, he said he told the Company that, if it had any more legal questions, to get in touch with the Local's attorney, Robert E. Conley.[1]

Wilford acknowledged receipt of a letter dated November 5, 1982 (R. Exh. 1), addressed to Curtis Welles of the National Labor Relations Board, advising as follows:

> CRST, Inc. had hoped to be able to resolve the matter raised by the complaint during the negotiation process with Local 238. We have been advised by Mr. Wilford, chief negotiator for Local 238, that any information we had concerning this matter should be directed to the Board. Therefore, CRST is writing you this letter concerning the information it will provide at this time.
>
> On pages two and three of the complaint certain information is requested which is identical to the information requested in Local 238's letters to CRST dated March 27, 1982 and April 16, 1982. These answers are submitted for the purposes of settlement discussions only, and not by way of any admission that CRST has violated the NLRA. CRST, in response thereto respectfully states that:
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> 6(a)(1). A maximum of 50.
> 6(a)(2). No, the loads were not transported by any employee of CRST.
> 6(a)(3). None.
> 6(a)(4). None.
> 6(a)(5). None.
> 6(a)(6). None.
> 6(a)(7). None.

Wilford said the Union was concerned about the city drivers' jobs throughout the last contract negotiating session because the Respondent had hired only two drivers, and there were four city jobs, the minimum specified by the contract. As a result of the vacancies, the Union filed a grievance. The Respondent introduced the Respondent's Exhibit 3, the Union's proposal, to show that it does not deal with city drivers and therefore the Union's requests for information are irrelevant. Wilford stated that the Company's November 5 letter did not respond to the Union's request. He said the requests would have become relevant to the over-the-road contracts.

In response to the Union's March 27 request, *Larry Pollard*, director of industrial relations for the Respondent, testified as follows:

> A. I don't recall the specific words that we used at that time. I know that we did not say at any time that we refused to give them that information.
>
> Q. On the 16th of April, do you recall any discussion, in depth, with regard to the relevancy of the information or what it was needed for or how it involved itself in the negotiation?
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> A. I don't believe there was any on that particular day.
>
> Q. Well now, after the 16th of April, did there come a time, later, when there was further negotiation or further conversation with respect to the union's request as set forth in both those letters of April 16 and March 27th?
>
> . . . .
>
> A. No Mam, I think you misunderstood. I said that there were two responses and the first one was that we would take it back to the company. The second response was that we rejected the request as to their relevance, at this time and that we would take it back to the company.

Pollard denied the Company ever refused to furnish the information requested by the Union. He acknowledged, however, that the Union asked about its requests on several occasions after April 16, more specifically on May 11 or 20, at which time he said Manning asked the Union did it need the information and how it affected negotiations. In response thereto, he said the Union said, "You have our request letters which covers it." The Union has never acknowledged its receipt of the information in the Respondent's November 5 letter which was directed to the National Labor Relations Board with a copy to the Union. The Union filed charges with the Board on April 5, 1982, for the Company's refusal to provide information. Pollard contends the Company supplied that information to the Board on November 5, with a copy to the Union. The Board issued a complaint on May 28, 1982. The next meeting, June 11, the Company did not provide the information. The parties met in bargaining sessions in July, August, and September, at

[1] I credit Wilford's testimony that he told company representatives if they were asking him legal questions they would have to contact legal counsel for Local 238. I also credit Wilford's denial that he refused to answer any more questions about the Union's request, and told the Company to take it up with the Board. However, I was persuaded that Wilford, out of frustration from being asked repeated questions about the specificity of the request, in effect, told the Company the contents of the Union's letter is clear, and he would stand on its language. The letter is in fact clear, and the Respondent did not direct any written inquiry to the Union about its lack of clarity. Hence, I was further persuaded by the oral as well as the circumstantial evidence of the Respondent's failure and refusal to provide any of the requested information, as well as by the demeanor of Wilford, that he was testifying truthfully in this regard, and the Respondent's witnesses were not.

which times the Union referred to its requests, but the Respondent did not submit the requested information to the Union. The parties also met in October and November and the Company did not submit the information to the Union.

Analysis and Conclusions

In determining whether the Respondent herein failed and refused to provide information repeatedly requested by the Union herein, it must first be determined whether the information requested by the Union met the legal requirements of relevance. In this regard, it is well-established law that the legal obligation of an employer to bargain collectively in good faith carries with it a duty to provide information requested by the duly designated bargaining representative of its employees, when that information is relevant, probably relevant, necessary, or useful to such representative in performing its representative functions (negotiating a collective-bargaining contract or enforcing the contract in arbitration proceedings) on behalf of the unit employees it represents. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 432–436 (1967); *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965).

Information requested by the bargaining representative on behalf of bargaining unit employees is presumptively relevant, and a specific showing of relevance is not required. However, when the request is for information outside the bargaining unit the bargaining representative is required to establish relevance, necessity, or usefulness of the information requested. In *National Cleaning Co.*, 265 NLRB 1352, 1353 (1982), appropriately cited by counsel for the General Counsel, the Board stated:

> An employer cannot refuse to furnish requested information on the basis that the bargaining representative seeks information regarding matters outside the scope of the bargaining unit represented by the union. Rather, an employer is obligated to supply such information when the information sought meets the requisite standard of relevance set forth in *Ohio Power Co.*, and reaffirmed in *Doubarn Sheet Metal, Inc.* The following language from *Ohio Power Company*, sets forth the standard of relevance to be applied:
>
> > Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise. . . . The obligation is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it.

The uncontroverted evidence in the instant proceeding established that during early negotiation sessions for a new contract on March 19, 1982, the Respondent submitted a contract proposal which the Union understood would, in the long run, eliminate the need for the four city drivers' jobs provided for under the current contract. The Company's explanation for the change was simply that it did not need city drivers. However, the Union had received apparently reasonable and reliable information that the Company was using over-the-road drivers within and without the unit's jurisdictional territory to perform work which should and could have been performed by city drivers. In order to further verify the information it had received about the over-the-road drivers, and to enforce the contract with respect to the city drivers' positions provided for under the contract, the Union requested the specific information outlined in its March 27 and April 16 letters.

A mere reading of the specific information requested by the Union readily reveals that the Union specifically stated:

> 1. That the information was needed to assist it in negotiating a succeeding contract with Respondent, with respect to the four city drivers' jobs provided for under the contract.
>
> 2. To enable the Union to properly bargain with Respondent about the number of over-the-road drivers, the scope, location, and amount of work being performed in the jurisdictional territory of Local 238, by members and members of Local 554 over-the-road drivers of the Respondent, operating as a complicated joint employer, as found by the Board in *Lincoln Sales & Service, Inc., d/b/a Midlands Express.*
>
> 3. The location of any freight pickup or deliveries by over-the-road drivers and where was such freight handled under the contract between Respondent and the Union.
>
> 4. How many dispatches were handled by leasing arrangements with other operators or fleet contractors, or others during calendar year 1981, and the names of such operators.

It is therefore clear that the Union not only stated the purpose (negotiations for a succeeding contract including the city drivers) for which the information was requested, but also it was reasonably specific and precise in enumerating what information it desired, by referring to a particular provision of the current contract relating to city (drivers') jobs which was a subject of negotiations brought on by the Respondent's contract proposal. Under these circumstances, I find that the information requested by the Union was not only probably relevant, but also in fact relevant, necessary, and indeed useful to the Union in carrying out its negotiation functions as bargaining representative of the over-the-road as well as city unit drivers, within the territorial jurisdiction of Local 238. *NLRB v. Acme Industrial Co.*, supra; *NLRB v. Truitt Mfg. Co.*, supra.

The Respondent's initial arbitrary announcement that the information requested by the Union was not perti-

nent, relevant, or clear is not supported by the evidence of record. In fact, the Union has more than satisfied the requirements of relevance. Any inquiries by the Respondent for additional specificity or clarity, if indeed there were any such inquiries, would have been apparently unnecessary and unduly burdensome for the Union to obtain more specificity, since the Union could hardly have had easy assess to more information without divulgence by the Respondent. As in *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 868–869 (9th Cir. 1977), also cited by counsel for the General Counsel, the court stated:

> When [a] union asks for information which is not presumptively relevant, the showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation. . . . Conversely, however, to require an initial, burdensome showing by the union before it can gain access to information which is necessary for it to determine if a violation has occurred defeats the very purpose of the "liberal discovery standard" of relevance which is to be used. Balancing these two conflicting propositions, the solution is to require some initial, but not overwhelming, demonstration by the union that some violation is or has been taking place.

Additionally, the Union (Local 238) manifested early concern about the probable erosion or diversion of bargaining unit work (work for four city drivers) by the Respondent when it filed a grievance about the Respondent's use of two instead of four city drivers, as provided by the contract in effect at the time. Moreover, when the Union received evidence that the Respondent was apparently operating a number of other trucking entities under various names set forth in a letter (G.C. Exh. 5), the Union's reason for requesting the specified information, as well as the relevance of such information to terms and conditions of employment within the bargaining unit, is well substantiated by the record evidence. As the Board stated in *Associated General Contractors of California*, 242 NLRB 891, 892 (1979), enfd. 633 F.2d 766 (9th Cir. 1980):

> [T]hey [unions] are entitled to the requested information under the "discovery-type" standard enumerated in *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. at 437, to judge for themselves whether to press their claims in the contractual grievance procedure, or before the Board or courts, or through remedial provisions in the contracts under negotiation. *The Torrington Company* v. *N.L.R.B.*, 545 F.2d 840 (2d Cir. 1976). It is certainly well within the statutory responsibilities of the Unions to scrutinize closely all facets relating to the diversion or preservation of bargaining unit work and, therefore, they are fully warranted in any reasonable probing of data concerning the exclusion of the employees of certain AGCC members from the bargaining units. [242 NLRB at 894, citing *NLRB v. Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969); *Curtiss-Wright Corp.* v. *NLRB*, 347 F.2d 61 (3d Cir. 1965).]

See also *National Cleaning Co.*, supra.

The Respondent's contentions that the information requested by the Union is not relevant because it is not sought by the Union for bargaining purposes, but instead for purposes of organizing nonunion employees of the Respondent and other employers in its territorial jurisdiction and that the Union has failed to explain why it needs the information, or that it is relevant and necessary to negotiations, are unsupported by the essentially uncontroverted evidence of record.

Did the Respondent Fail and Refuse to Provide Relevant Information Requested by the Union?

The record evidence fails to demonstrate that the Respondent made any attempt to provide the Union with the requested information prior to November 5, 1982. In fact it is well established by the record that the Respondent informed the Union in late March or early April that it did not deem the requested information pertinent or relevant to negotiations, and that it believed the Union wanted the information to organize nonunion employees in the Respondent and other companies. The Union filed a charge in the instant proceeding on April 5, 1982, and renewed its request for the information by letter on April 16, 1982. As the Respondent's director of industrial relations, Larry Pollard, testified, the Respondent's second response to the Union's request was that "we rejected the requests as to their relevance, at the time, and would take it back to the Company." The record does not show that the Respondent ever changed its position prior to November 5, 1982, about providing the requested information.

Although testimony by the Respondent's witnesses seemingly imply that the Respondent had some questions about the relevance or clarity of the information requested by the Union, it is particularly observed that at no time did the Respondent ever direct any specific inquiries, or even a response in writing to the Union's written requests. Thus, it is unequivocally clear from the Respondent's oral responses of rejection, as well as its continued overt omission to provide any information to the Union from March 27, 1982, to November 5, 1982, that the Respondent's failure to provide the information was in keeping with its initial erroneous oral response, that the information was not relevant or pertinent to the Union's representative bargaining function. Hence, the Respondent has failed to provide the requested information during the entire period, March 27, 1982, through November 5, 1982, while negotiation sessions between the Union and the Respondent were in progress.

Finally, on November 5, 1982, the Respondent submitted a letter (R. Exh. 1) to the National Labor Relations Board as an offer for settlement. The letter contained some information about the Respondent's freight road driver operations. However, a cursory reading of the letter reveals that it does not provide much information in response to the specific requests outlined in the Union's letters of March 27 and April 16, 1982. The Re-

spondent sent a copy of its letter (R. Exh. 1) to the Union, which it contends constituted a response to, and discharge of, any duty it had to provide the information requested by the Union. However, as counsel for the General Counsel argues, the Respondent's original letter (R. Exh. 1) was a response (letter directed) to the National Labor Relations Board in an effort to achieve a settlement with the Board with respect to the charge filed herein. The Respondent merely sent the Union a courtesy copy of that letter. Since the letter was addressed to the National Labor Relations Board, which is neither an agent of the Union nor the bargaining representative of the unit employees, such letter can hardly be construed as a response to the Union's request and the statutory duty of the Respondent to provide information to the duly designated bargaining representative of its unit employees.

Nevertheless, assuming arguendo that the Respondent's November 5 letter (R. Exh. 1) was an attempt to provide some of the requested information, the excessive lapse of time under the circumstances, in the absence of any excuse offered by the Respondent for the untimely delay, can neither justify the Respondent's conduct nor obviate the need for a remedy herein. *Universal Building Services*, 234 NLRB 362 (1978); *Taft Broadcasting Co.*, 264 NLRB 185 (1982); *Lumber & Mill Employers Assn.*, 265 NLRB 199 (1982).

Although the Respondent argues that the Union made a request for information pertaining to both the shop and city contracts, and refused to establish any rationale in support of the request, I find that the information requested about the shop contract was sufficiently relevant to the city contract, on the ground that it is potentially and probably relevant, if not in fact relevant, as I have found. *Associated General Contractors of California*, supra. Additionally, I find that the Union's explanation for the requested information of employees under the shop contract had a direct bearing on, and was relevant to, the bargainable issues raised in regard to the city contract employees. Under these circumstances, I find that the Union's request satisfied the requirements of *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1093 (1st Cir. 1981), cited by counsel for the Respondent.

Although the Respondent argues that since the Union requested the information on March 27, 1982, and filed its unfair labor practice charge on April 5, 1982, such filing by the Union constituted bad faith on its part, and its resort to the Board was premature. *Soule Glass & Glazing Co. v. NLRB*, supra. However, it is observed that the Union in the instant case did not file its unfair labor practice charge against the Respondent until after the Respondent informed the Union that the information it requested was not pertinent or relevant to the negotiations. Counsel for the Respondent further argues pursuant to the *Soule* case that where an employer offers to assist the union the union must try to accommodate the employer in reference to providing information requested. It is noted, however, that the Respondent did not establish any evidence of its efforts to assist the Union in any way in the instant proceeding. Consequently, the principle of the *Soule* case is not applicable in that regard to the facts as found herein.

Consequently, I conclude and find on the foregoing findings and authority that, by failing to provide the Union with the information requested, the Respondent has failed and refused to bargain in good faith in violation of Section 8(a)(1) and (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in close connection with its operations as described in section I, above, have a close, intimate, and a substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, by refusing to furnish the Union relevant information requested by the Union for the purpose of negotiating a succeeding collective-bargaining agreement on behalf of unit city truckdrivers, and by so failing and refusing, the Respondent has failed and refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act, the recommended Order will provide that the Respondent cease and desist from engaging in such unlawful conduct, and that it take certain affirmative action necessary to effectuate the purposes and policies of the Act.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that the Respondent cease and desist from or in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Cedar Rapids Steel Transport, Inc., a/k/a CRST, Inc., the Respondent herein, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 238, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to provide the above-named Union with information necessary and relevant to its administration and negotiation of collective-bargaining agreements with the Respondent, the Respondent has interfered with, restrained, and coerced its employees in the exercise of

Section 7 protected rights in violation of Section 8(a)(1) of the Act.

4. By failing and refusing to provide the above-named Union with necessary and relevant information requested by the Union, the Respondent has failed and refused to bargain in good faith, in violation of Section 8(a)(5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and the entire record, I issue the following recommended[2]

ORDER

The Respondent, Cedar Rapids Steel Transport, Inc., a/k/a CRST, Inc., Cedar Rapids, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing employees in the exercise of their guaranteed Section 7 rights, by failing and refusing to bargain in good faith with the designated representative of unit employees.

(b) Refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Offer to and, on request, provide to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 238, the information which it requested in its letters of March 27 and April 16, 1982.

(b) Offer and, on request, bargain collectively in good faith with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 238, the Union herein, on behalf of our employees in the appropriate unit.

(c) Post at the Respondent's Cedar Rapids, Iowa facility copies of the attached notice marked "Appendix."[3] Copies of said notices on forms provided by the Regional Director for Region 18, after being signed by Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the united States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide the information requested by the Union for its evaluation in effectively performing its representative function in negotiating and administering collective-bargaining agreements with us.

WE WILL NOT fail and refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer to and, on request, provide the Union with the information it requested on March 27 and April 16, 1982, and thereafter to enable it to effectively perform its representative function of negotiating and administering collective-bargaining agreements with us.

WE WILL, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit described as follows:

> All full-time and regular part-time city employees engaged in local pickup and delivery and assembly of freight in any area not to exceed a radius of 25 miles of Cedar Rapids, Iowa, or in the case of peddle drivers, not to exceed a radius of 100 miles of Cedar Rapids, Iowa, employed by Cedar Rapids Steel Transport, Inc., at its Cedar Rapids, Iowa facility; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

CEDAR RAPIDS STEEL TRANSPORT, A/K/A CRST, INC.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the Nationa Labor Relations Board."